

Remarks

The Office Action of September 22, 2003, has been carefully considered. In response thereto, claims 1-13 and 29-37 are withdrawn from consideration, since the Examiner believes they are directed to a non-elected invention. Claims 14-28 and 38-40 remain in this application for further prosecution on the merits.

Claim 14 is directed to a polymeric composite building material comprising a composite reinforcement comprising *continuous filaments of fiber substantially oriented in at least a first direction and within a polymeric matrix; and a capstock polymeric material disposed substantially over said composite reinforcement; said building material being resistant to heat deformation and corrosion*. Independent claim 23 is directed to a polymeric composite fencing component including *continuous filaments of high strength fibers oriented substantially in at least a first longitudinal direction*. Independent claim 38 is directed to a polymer composite building material including *continuous glass filaments of fibers substantially oriented in at least a first direction*.

Applicant appreciates the withdrawal of prior rejections under §102(b)(e) and §103(a). In the Office Action of September 22nd, the Examiner rejects claims 14-28 and 38-40 under the judicially created doctrine of obviousness-type double patenting over claims 1, 8 and 15 of Stucky et al. '268 in view of Jambois '412. The Examiner states:

Both the Stucky reference and the instantly claimed invention disclose a polymer composite building material comprising a composite reinforcement comprising continuous fibers and a capstock material wherein dyes and pigments can be used to have a dark color for the capstock.

As stated by the Examiner, a timely filed Terminal Disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome any actual or provisional rejection based on a non-statutory double patenting ground, provided the conflicting application or patent is shown to be commonly owned with this application. Accordingly, Applicant encloses a timely filed Terminal

Disclaimer executed by the undersigned for obviating the non-statutory double patenting rejection based upon Stucky et al. '268. The Stucky et al. '268 patent is commonly owned with the instant application.

On pages 4-6 of the Office Action, claims 14-28 and 38-40 were rejected under 35 USC §103(a) as being obvious over Stucky et al. '268 in view of Jambois '412. The Examiner suggests on page 5, that for Applications filed on or after November 29, 1999, this rejection may be overcome by showing that the subject of the reference and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. The present invention was filed on November 19, 2001, well after November 29, 1999. Stuckey et al. '268 and the instant application are commonly owned and were subject to an obligation of assignment to the same person when the inventions were made and, thus, meet the exception of §103(c). Accordingly, reconsideration of the §103(a) rejection is respectfully requested.

Respectfully submitted,

12-17-03

(Date)


Peter J. Cronk

Registration No. 32,021

Customer No. 08933
DUANE MORRIS LLP
One Liberty Place
Philadelphia, PA 19103-7396
Telephone: 215-979-1252
Facsimile: 215-979-1020